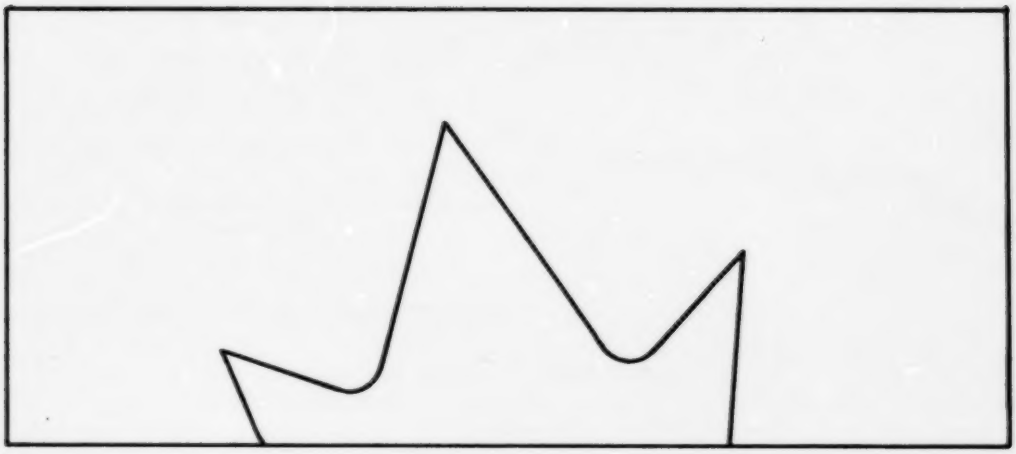
Position of the Legislative Assembly on Constitutional Development in the Northwest Territories



PREFACE

This report is prepared in two parts. Part One contains a Summary of the Recommendations put forward by the Assembly, together with some introductory remarks. The recommendations are grouped under various headings.

Part Two of this report contains the Supporting Detail. It is divided into a number of chapters which correspond with the grouping of the recommendations. The following Table of Contents will be useful as a cross reference between recommendations and supporting detail.

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PART ONE: SUMMARY OF MAJOR RECOMMENDATIONS

Introduction

The Legislative Assembly of the Northwest Territories, hereafter referred to as the Assembly, has looked at the historical precedents for responsible government set in the 1890's and at the deliberations of the Carrothers Commission, and has decided that it is appropriate to review the whole question of constitutional development in the light of the realities of 1979.

We have come to the conclusion that the realities of 1979 do not support the comment found in the 1969 White Paper on the Development of Government in the North which claims that the "granting of Provincial status ... at this time and for the foreseeable future ... is not a realistic alternative." We have found encouragement in the Prime Minister's statement of August, 1977, on Political Development in the NWT, when he recognized the "legitimate aspirations and desire of all residents in the NWT to take charge of their own affairs." We have also appreciated the work of the Prime Minister's Special Representative on Constitutional Development in challenging each and every one of us to state what political developments we expect. We believe that political development in the North is moving along a continuum. We believe that we are ready for responsible government **now**, and when we have achieved that goal we will set our course firmly in the direction of Provincial status.

We can not accept the Federal Government's denial of responsible government **now** to Canadians in the NWT.

Section 146 of the *British North America Act* clearly envisaged the extension of responsible government to all parts of Canada, and the *Canadian Bill of Rights, 1960*, made it clear that "in a free and democratic society there are certain rights and freedoms which must be assured to all the people of that society." Responsible government at the Territorial as well as the Federal level is such a right and Provincial status, as a matter of Federal policy, should be considered as inevitable.

The recommendations which follow have spelled out the practical ingredients of responsible government and the steps which must be taken along the path to Provincial status.

Naturally our progress, due to the legal position of the NWT, requires the co-operation of the Government of Canada. We may have all the willingness in the world to increase our economic self-sufficiency, to increase the effectiveness of our Assembly and its Members, to strengthen the Local level of government but without the co-operation of the Government of Canada our efforts will be frustrated. Most of the actions we seek from the Government of Canada are, however, fairly easy to achieve. Most of the changes in the executive authority are mechanical, the transfer of resource administration simply requires a change in reporting relationships, and many other areas require only minor changes in Acts of Parliament so that Territorial legislation can take effect.

Yet the Assembly is not merely seeking concessions. We are anxious to see the contribution of the NWT to Canada fully recognized. All over the world there has been a reaction to paternalism and the North has been patient. Now we are not so patient. Now we must get on with the job of building a new North. We are prepared to do our part by being fully committed to the settlement of land claims and the protection of native rights. We are prepared to ensure that the community-related services of the Government of the Northwest Territories, hereafter referred to as GNWT, recognize and meet local needs and concerns.

We wish to participate in executive decision-making, to spread the word that there is a relationship between devolution and the willingness and the ability to pay. We are prepared to work together with the Government of Canada in the rewriting of the *Northwest Territories Act*.

We believe that our participation in all these changes must be as an equal partner, for we are the ones who have lived and will continue to live in the North. If there are to be mistakes, let them be ours. The people of the NWT will indicate at the polls whether or not we made the right decisions.

The recommendations which follow are submitted in this spirit of equality — equality as a right and equality as an obligation. Many of the recommendations are addressed to ourselves, many we are taking action on, and many more will require action on our part when minor impediments to the full exercise of our responsibility have been removed. We have made recommendations in relation to: Fundamental Issues; Legislative Assembly; Executive Authority; Legislative Authority; Economic Development and Resource Responsibilities; Other Program Areas; and Regionalism, Local Government and Devolution.

We recommend:

I. FUNDAMENTAL ISSUES

1. THAT the Government of Canada recognize the right of the people of the NWT to responsible government **now** and the inevitability of Provincial status.

2. THAT financial arrangements between the GNWT and the Government of Canada be based on a multiyear commitment, in order to allow for greater fiscal autonomy in the NWT. The commitment would be negotiated on an agreed growth basis and would take into account the contribution of the NWT to the wealth of Canada through taxes, gross resource revenue and other means.

3. THAT in order to stimulate economic development, the Government of Canada complete the transfer of the administration of resources to the GNWT immediately and recognize that the transfer of ownership will accompany Provincial status.

4. THAT the Government of Canada recognize that its "special responsibility" for Indians and Inuit is best exercised through the GNWT with the Federal Government monitoring the recognition of special rights within Territorial legislation.

5. THAT the Government of Canada grant to the GNWT the status of an equal partner in the settlement of comprehensive native claims because of the effect which the settlement of these claims will have on the future of all people in the Territories and because of the need to have community and other interests more fully represented.

II. LEGISLATIVE ASSEMBLY

6. THAT an amendment to the *Council Ordinance* confirm legislatively, the existence of an Executive Committee.

7. THAT the practice of the Assembly recommending Members for appointment to the Executive Committee be continued; the Assembly specify the assignment of responsibilities for Executive Members; these recommendations be binding on the

Commissioner; and any changes in assignments be subject to consultation and ratification by the Assembly.

8. THAT if political parties emerge it would be the responsibility fo the majority party leader to name Cabinet Members and have their responsibilities ratified by the Assembly.

9. THAT a Parliamentary internship program be established to provide support services to non-Executive Members of the Assembly.

10. THAT support services to the Assembly be provided under the direction of the Clerk of the Assembly; and the Clerk be responsible to the Speaker.

III. EXECUTIVE AUTHORITY

11. THAT the authority of the Executive branch of government in the NWT be reallocated and the components of the Executive be reshaped in two stages, as follows:

(a) **Immediately (Following Election of the 9th Assembly)**

- (i) The membership of the Executive Committee consists exclusively of elected Members.
- (ii) The elected Executive Members elect their Chairman from amongst their number.
- (iii) The Executive Committee decisions be referred to the Commissioner for ratification.
- (iv) The Commissioner be bound to ratify the decisions of the Executive Committee unless he is instructed specifically to the contrary by the Minister or by the Governor in Council.
- (v) The position of Deputy Commissioner not be filled on a full time basis, but temporary appointments be made only to accommodate absences or any other inability of the Commissioner to act.
- (vi) The position of Assistant Commissioner disappears when the present incumbent vacates the position.
- (vii) The number of Executive Members be increased immediately following the election. The number of Members be not less than five nor more than seven; every department of the Government be assigned to an Executive Member; and some reorganization of departments may be required.
- (viii) The Executive Committee be supported by a more comprehensive secretariat.
- (ix) The Executive Members be provided with executive assistants.

(b) **Within the Next Four Years**

- (i) The Commissioner be named Lieutenant Governor and be bound by all decisions of an Executive Council.
- (ii) An Administrator perform the functions of the Lieutenant Governor in his absence; this to be a *pro tem* assignment, probably of a Supreme Court Judge.
- (iii) Executive Council Members fully perform all ministerial functions with respect to all departments.

(c) **Within the Next Ten Years**
An Act be prepared to establish a Province of, or within, the NWT.

IV. LEGISLATIVE AUTHORITY

12. THAT the *Northwest Territories Act* be completely revised before the election of the 10th Assembly to provide a constitutional framework like that found in Section 58 to 90 of the *British North America Act* for the Provinces; and the Assembly be authorized to amend its constitution except with respect to the Office of Lieutenant Governor.

13. THAT the limitation on the exercise of legislative jurisdiction by the Assembly presently found in Section 13 of the *Northwest Territories Act* be removed; and Territorial legislation be subject only to Acts of Parliament that include a clause specifying the application of that Act to the NWT.

14. THAT Members of the Assembly be full and equal participants in the revision of the *Northwest Territories Act* from its commencement to its conclusion.

V. ECONOMIC DEVELOPMENT AND RESOURCE RESPONSIBILITIES

15. THAT as a first step in expanding economic development opportunities in the NWT, the administration and management of resources including land use, water, forests, minerals, oil and gas, be transferred immediately from the Federal to the Territorial Government.

16. THAT the Governor in Council issue an order transferring the administration of crown lands to the GNWT for the beneficial use of the Territories.

17. THAT the ownership of crown lands and resources in the Territories be transferred when Provincial status is granted.

18. THAT steps be taken to reach an agreement with the Government of Canada on the transfer of the administrative responsibilty for inland fisheries.

19. THAT effective immediately no further lands be set aside as National Parks without the consent of the Legislative Assembly; and land be allocated for Territorial Parks.

20. THAT in the field of environmental protection, the Parliament of Canada withdraw its legislation, except with respect to offshore activities, so that regulatory functions are carried out by Territorial and Local Government employees implementing Territorial legislation.

21. THAT the Northern Canada Power Commission be located in the NWT; and power generation, transmission and distribution in the NWT should be subject to the legislative control of the Territorial Assembly.

VI. OTHER PROGRAM AREAS

22. THAT the *Land Titles Act* (Canada) be repealed; and a Territorial Land Titles Ordinance be enacted to replace it.

23. THAT an NWT Department of Justice be established immediately; the Federal Justice employees resident in the NWT be transferred to the public service of the Territories and be appointed agents to the Attorney General of Canada for the prosecution of offenses under Federal Acts.

24. THAT the *Canada Labour Code* be amended to remove the impediment to the enactment of a Territorial Labour Relations Ordinance.

25. THAT the *Canadian Human Rights Act* be amended to exclude its application to the public service of the NWT so that it applies in the NWT only to the extent that it applies in any Province.

26. THAT the transfer of responsibility for the delivery of health care services to all residents of the NWT be expedited by the co-operation of the Federal departments with the Territorial Department of Health so that a transfer is fully effected by April 1, 1980.

27. THAT a long-range plan for highway construction and reconstruction under GNWT control and management be agreed to by the Treasury Board.

VII. REGIONALISM, LOCAL GOVERNMENT AND DEVOLUTION

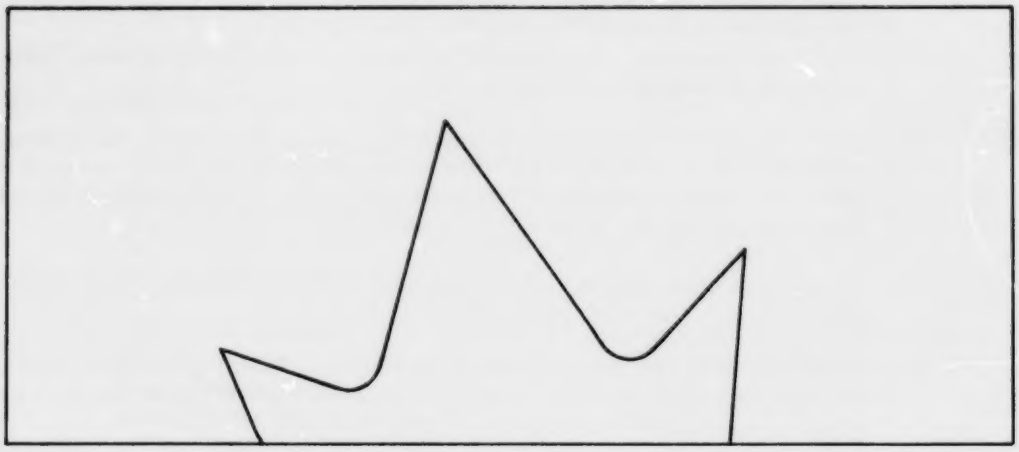
28. THAT unity is essential if the NWT is to attain an equal standing in the Canadian Confederation; and the only way to achieve unity is through one Territorial Government representing all peoples in the NWT.

29. THAT there are properly three levels of government in the NWT, Federal, Territorial and Local; and therefore, there is no place for a regional level of government with its own law-making powers and administration.

30. THAT in order to meet the diversity of interests and concerns throughout the NWT, the Assembly favours strengthening the Local level of government, encouraging a more active role for Members of the Assembly and improving the administrative interface between the Local and Territorial levels of government.

31. THAT the process of devolution be speeded up by the transfer of more powers from the Federal to the Territorial level of government and by more action by the GNWT in determining powers sought at the Local level of government.

32. THAT it be accepted by the Government of Canada, that the only vehicle for effecting devolution to the Territorial or Local levels of government in the NWT is the Assembly of the NWT.



PART TWO: SUPPORTING DETAIL TO THE RECOMMENDATIONS OF THE LEGISLATIVE ASSEMBLY

CHAPTER I: FUNDAMENTAL ISSUES IN CONSTITUTIONAL DEVELOPMENT

The purpose of the chapter is to examine three issues which are fundamental to constitutional development in the NWT. These issues are: the inevitability of the movement towards Provincial status; the role of the GNWT in resource management; and the extent of the Federal responsibility for Indians and lands reserved for Indians within the NWT's context.

PROVINCIAL STATUS

A. Responsible Government as a Right of All Canadians

"Every citizen of Canada has a claim to participate in the institutions of responsible government under the Canadian Constitution; it is a goal of political development of the NWT that the optimum number of Canadian citizens resident in the Territories should, at an optimum speed, participate in government as fully as Canadian citizens resident in the Provinces."

The Assembly considers this postulate of the Carrothers Commission to be an irrefutable statement of the rights of Territorial residents. The Assembly further considers that Provincial status for the NWT is an undeniable goal. It must be reached within a reasonable and proper period of time through an orderly evolutionary process, without needless delay or obstruction.

In the following paragraphs we will define what we mean by "responsible government" and "Provincial status" in todays terms. It will then be possible to realize what steps have to be taken so that these goals can be achieved.

B. Essential Elements of Responsible Government

There would be responsible government in the NWT if four things happen:

1. **If the elected representatives constituted the Executive Committee** so that limits would be placed, constitutionally, on the executive powers of the Commissioner. More details of this proposal are contained in Chapters II and III following:

2. **If the GNWT received more powers under the *Northwest Territories Act*;** and specifically, powers related to the administration of land in and around communities, to certain resources essential for economic development and to labour. It must be recognized that most of the powers that are being sought are powers which are required for effective government at the Local level.

   In addition, a major part of the extension of Territorial powers would be an agreement that the Parliament of Canada would not make changes to, invade or supersede the *Northwest Territories Act* without the agreement of the NWT Assembly. The present state of legislative insecurity does nothing to promote stable growth in the North.

3. **If agreement was reached on a system of direct funding from the Federal Treasury,** possibly negotiated by the Intergovernmental Committee on Finance, chaired by a GNWT representative. The intention would be to work toward a multiyear commitment of funds and to limit the paternal role of the Minister and Department of Indian Affairs and Northern Development in the NWT. The GNWT should also be able to deal directly with other Federal departments, such as Energy, Mines and Resources and Regional Economic Expansion.

4. **If the GNWT was recognized as a separate and distinct level of government** with a right to separate representation at all Federal-Provincial meetings and at any meetings dealing with the affairs of the NWT. This recognition and representation would increase as the NWT moves towards Provincial status.

Neither responsible government nor Provincial status means a removal of the Federal role in the North, it merely means a removal of duplication and unnecessary paternalism so that the NWT can proceed to resolve its own challenges of increasing self-sufficiency, regional diversity, land claims, native rights and economic development.

These changes would result in the implementation of responsible government in the NWT. It is now necessary to define in more detail what the next step — namely Provincial status — would mean.

C. Basic Ingredients of Provincial Status

The Assembly has defined three basic ingredients of Provincial status, namely: fiscal autonomy; control of funds by the Assembly; and the authority for the NWT to amend its own constitution. These ingredients would come together over the next four years.

1. Fiscal Autonomy

The Assembly believes that it is unrealistic, in current terms, to equate Provincial status with fiscal self-sufficiency. It is recognized that, even after responsible government, non-renewable resources will remain largely under Federal control. It seems to us, however, that the Parliament of Canada can not decide that it is in the national interest to refuse resource transfers, such as that given to Alberta in 1930, and at the same time be the body that refuses the NWT an equal standing with the Provinces. A more practical concept would seem to us, therefore, to be fiscal autonomy. Under such a concept the GNWT would negotiate with Ottawa a guaranteed multiyear funding base. The number of dollars negotiated would be related to the taxes, royalties and fees taken out of the NWT, as well as to the effect on the North of the Federal restrictions on land use and resource development. We realize of course, that fiscal autonomy means that the Territories would also be obliged, and have further powers to raise revenue. In this regard and as a first step, the Assembly approved at its last sitting the raising of a new "property users tax". Additional funding would also presumably be available to the NWT, as it is to all Provinces, through the programs of the Department of Regional Economic Expansion.

2. Legislative Control of Financial Planning

The second ingredient of Provincial status follows from fiscal autonomy. The process of negotiating the funding with Ottawa would be supervised by the Assembly, and decisions on the use of funds would be made by the Assembly and the Executive.

An Executive Subcommittee on Finance would control the allocations of funds into and within departmental budgets, and a Standing Committee on Finance would make a detailed examination of the total government estimates prior to their consideration by the Assembly. The Standing Committee could undertake its review by having Members consider those departments of greatest interest to them, and then combining everyone's comments in a report to the Assembly. Multiyear funding would allow the Assembly a practical level of control over financial planning which is not possible at the present time.

3. Authority to Amend the NWT Constitution

The third ingredient would be granting to the NWT Assembly the authority to amend its own constitution. By this time it would be necessary, in any event, to completely rewrite the *Northwest Territories Act* in view of the amendments that would have been made over the years. The Parliament of Canada would retain a power of disallowance for one year over the laws of the NWT Assembly, as it has in respect to the Provinces.

D. The Party System

It will be noted that we have not referred to a party system as an element of responsible government or as a prerequisite for Provincial status. It may be that it will emerge in the NWT, but it may also be that regional caucuses and interest groups of Members of the Assembly will have more relevance and value in our vast and scattered territory than parties, which may cause only more division among our people. In any event we see no justification for making the party system an essential element of political development. A non-partisan tradition did, after all, exist in the last period of responsible government in the NWT from 1897 to 1905.

E. Equality with the Provinces

It should not be necessary to add that our concept of "Provincial status" would include equal constitutional standing with the Provinces in Canada's Confederation, but for the sake of clarity and in view of the omissions in the 1978 Constitutional Amendment Bill, we would emphasize this point.

The recognition of the separate and distinct status of the GNWT we see as an essential element in responsible government, and, as we said in that section, we see this developing and expanding as we move towards Provincial status. By the time that Provincial status is formally recognized we would expect the NWT to have its own seat at First Ministers' Conferences and no matter affecting the NWT would be discussed without the participation and approval of representatives from the NWT Assembly.

ROLE OF THE GOVERNMENT OF THE NORTHWEST TERRITORIES IN RESOURCE ADMINISTATION AND MANAGEMENT

We come now to the second fundamental issue in the constitutional development of the NWT. Our position is that the administration and management of natural resources would be transferred now to the GNWT with ownership coming later at the time of Provincial status. We will also refute the stand that such a transfer can not take place for reasons put forward by the Federal Government, namely environmental protection, land claims and national energy interests.

Northwest Territories Legislative Assembly Position

We believe that a transfer of the administration and management of natural resources to the GNWT must take place immediately in order to avoid duplication in staffing and funding, to encourage community involvement and above all, to promote economic development.

A. Avoiding Duplication

1. **Legislation**
   Territorial legislation in the field of resource management existed for many years prior to the creation of overlapping Federal statutes and regulations. The Territorial legislation includes the *Forest Protection*, the *Mining Safety* and the *Explosives Use Ordinances*, all of which are still largely administered and interpreted by Federal officials of the Department of Indian Affairs and Northern Development. In addition, Territorial public servants, under legislation such as the *Commissioner's Land Ordinance* and regulations, the *Wildlife Ordinance*, the *Area Development Ordinance* and the *Environmental Protection Ordinance*, also have administrative responsibilities in relation to natural resources.

2. **Federal-Territorial Committees**
   Territorial officials are also key members of various joint Federal-Territorial advisory committees concerning resources, such as the Land Use Advisory Committee and the Federal-Territorial Lands Advisory Committee. The membership of these joint advisory committees consists of employees of the Territorial Government's Town Planning and Lands division and Wildlife Services, whose level of expertise and knowledge of community concerns has been, and will continue to be, crucial to the success of the activities of these bodies.

3. **Structures Already in Place**
   The process of transferring the management and development of natural resources to the GNWT has been under way for some time, although there has been a disturbing slowdown in recent years. In addition to wildlife management, zoning of highway and resource areas and some aspects of environmental protection, which rests with the Territorial Administration, there is also the responsibility for land use, land disposition, timber and quarry management in relation to those lands transferred to the Commissioner under the Block Land Transfer Program. The administration and control of fifteen community areas has been transferred to date, including all of the major municipalities in the NWT, as well as the

majority of the communities in the Mackenzie Valley and Delta. However, this Block Land Transfer Program was suspended in 1978. We can not accept this decision.

We feel that the administration and field support staff of DIAND could be easily transferred intact to the GNWT control. DIAND has had a Federal Lands office in Yellowknife since 1969, but the GNWT has had its own Town Planning and Lands office since 1968. The balance of the DIAND office in Yellowknife dealing, for example, with forest protection, similar parallels Provincial bodies and should be part of the GNWT.

4. **Federal-Territorial Working Agreements**
Despite the suspension of the Block Land Transfer Program in 1978, the Territorial Government's Town Planning and Lands office has continued to carry out its planning and administrative responsibilities for all NWT communities under a working agreement with DIAND dating back to 1972. This agreement provides for the volume of administrative service to be handled by the Town Planning and Lands division of the Department of Local Government and although DIAND is not bound under any statutory requirement to accept the recommendations of the Territorial Government, it has done so on virtually all occasions. In fact, it is employing the land contract documents prepared by the Territorial Government. The DIAND office in Yellowknife functions as little more than a "rubber stamp" on these matters, despite the duplication of effort and expense involved in this overlap.

B. Encouraging Community Involvement

1. **Community Input into Administration**
As a matter of policy and routine, the GNWT has insisted that all land and land use applications for resource development on crown lands must be reviewed by the community council concerned. To this end, the settlement secretaries, as Territorial land agents, have a close working relationship with the Department of Local Government. They co-ordinate the review of the land applications by the council. As well, officers responsible for land use planning in the various regional offices of the GNWT are employed to assist the councils where necessary. It should be obvious that the advantage of insisting that all applications be reviewed at the Local level ensures community input even in cases where, to the Federal Government which has no such organizational base in the communities, this application review may not seem necessary.

2. **Devolution of Management Responsibilities**
The Territorial Government is seeking the transfer of the management responsibilities for resources so that it can follow through on its commitment to the devolution of many of these responsibilities to the Local level of government. This is the purpose of the Municipal Lands Policy. Under the Municipal Lands Policy, lands are offered to villages, towns and the city on a first refusal basis in order that they may control the development thereon. Hamlets are allowed as a matter of policy, to control all lands used for their own purposes.

3. **Increased Role of Elected Officials**
   Perhaps of even greater note is the fact that the Territorial Assembly, through the Executive Member for Local Government, has instructed that a total **review of lands policy** be undertaken so as to more clearly reflect the concerns of residents of the Territories. The intention is that an elected official, responsible to the public would dictate policy rather than a Federal or Territorial civil servant.

C. Promoting Economic Development

The generation of economic development to encourage community self-sufficiency is clearly tied to the management of renewable resources on crown lands surrounding each community area. Management of surface rights remains the key not only to renewable resource development but also to non-renewable resource development under the land use permit system. Increased control at the Territorial and Local levels would go a long way towards allowing for increased economic development for all residents in forest and fisheries management, tourism and recreation, hunting and trapping, and agriculture.

It would also make it possible to strengthen the local community land management system which has been developed to the extent that Local Councils now participate in the planning exercises to produce local general development plans and zoning provisions. It would allow the community to make more important decisions regarding their own future in the resource management area so that they could effectively manage matters such as airports, gravel supplies, waste disposal areas and recreation, as well as other economic development interests.

Rejection of Federal Position

It has been argued that, in addition to ownership, it is essential for the Federal Government to maintain their administration and management of resources because of the need to protect the environment, settle land claims and protect long-term national energy requirements. We recognize that there will be a continued Federal ownership of resources for the present, but we believe that there are practical reasons for having the resources administered by the GNWT.

Our reasons are as follows:

A. Environmental Protection

1. **The Federal Government has only recently become involved in environmental protection.**
   An amendment in 1970 to the *Territorial Lands Act* enabled the establishment in 1971 of land use regulations. Previous legislation was designed to transfer surface and subsurface rights and to provide a legal basis for setting aside specific areas for particular use such as public parks. By providing for regulations designed to minimize the detrimental aspects of land use operations, the land use regulations changed the spirit of the Act from that of a vehicle for allocating rights to one which also protected the land surface. The Federal quarry regulations have been in existence since 1957, but it was only last year that the Federal Government began enforcing them in the Eastern Arctic.

2. **The GNWT plays a major role in environmental protection matters now.**
Territorial representatives are key members of the Land Use Advisory Committee. The Territorial representatives, as a matter of routine, ensure that restrictive covenants are included in land use permits or leases. Also, since the vast majority of land use activities are directly realted to community use, such as airstrips, quarrying, road construction, reservoir construction, etc., or to sensitive wildlife areas, it is the GNWT's representatives from the Department of Local Government or the Wildlife service who provide the necessary environmental input.

3. **Environmental protection is primarily a local issue and, as such, is a responsibility of the GNWT.**
More often than not, some of the most controversial land use applications are concerned with community interests, such as gravel or caribou. It is the people in the local community who must live with the consequences of land use operation. It is the air they breathe, the water they drink and fish from and the land that sustains their livelihood which is at risk. They should, therefore, participate in the process of setting conditions under which their environment should be controlled. The interests of southern Canadians are directly concerned with the development of the resource potential, but they are not as obviously concerned with the environmental consequences. These are necessarily local matters.

4. **The GNWT has taken the initiative in environmental protection.**
This has been evident in the careful preparation of a *Wildlife Ordinance* and in the enacting of additional environmental legislation such as the *Area Development Ordinance* which allows for regulations similar to the Yellowknife area watershed development regulations, and the Norman Wells development regulations and regulations pertaining to development along the NWT highways network. Other regulations being prepared include the Inuvik watershed protection regulations, as well as the Yellowknife area recreational land use plan. Under the *Area Development Ordinance*, regulations can be enacted relating to any part of the NWT specifying any required zoning constraint.

   As well, Territorial officers play an active role in the inspection and enforcement of environmental matters relating to resource management on all crown lands. Officers from the Safety division regularly check all drilling rigs and mining operations.

B. Land Claims

1. **Transfer of the administration and management of resources to the GNWT will serve to establish a unified working mechanism that will be in existence for crown lands after the claims process has been completed.**
Little thought seems to have been given by the Federal Government as to what will happen in the administrative areas after the settlement of land claims, and how the necessary manpower and expertise can be trained and developed.

2. **It will allow for the protection of the interests of the Local level of government.**
The community will have more of a say in land claims negotiations, whereas in the past the community councils have largely been ignored. Their voice will also be heard directly in the decisions on land and on policy through their elected representatives in the Assembly. We believe that land claims will be much easier to resolve if they are negotiated from the community level up and if, as a first principle, the concept of community management is confirmed.

It is this principle which the GNWT has introduced in its Municipal Lands Policy, and which has been accepted by predominantly native communities.

3. **Transfer of the management of resources will not prejudice land claims.**
There will be no delay in returning the lands required in the land claims negotiations. As described earlier, Block Land Transfers surrounding fifteen communities have already been made to the Commissioner. Yet as an example of the Territorial Government's efficiency in the matter of assisting the claims process, the Commissioner returned portions of the Block Land Tranfers at Inuvik and Aklavik to the Federal Government within a period of only four days. The provision still exists under the *Territorial Lands Act* for the Federal Government to withdraw any lands it may deem necessary for its purposes such as land claims or parks, should the need arise, even when the administration and control of these lands has already been transferred to the Commissioner.

4. **A Land Management Board or policy body similar to the Water Board could be established.**
There is a need for a wider evaluation of the application of government policies which have the effect of committing significant areas of lands to single or limited use purposes such as sanctuaries, parks and International Biological Program sites. At the present time there does not appear to be a body in place that considers land use in a Territorial or regional scale. The unilateral advance of one policy action without due consideration to the possible effects on others could be detrimental to the orderly development of any of the economic sectors in the Territories.

We believe that this wider evalution could best be done by a board having some independence from the initiator and being composed of representatives of native people, industry, government and others appointed on the recommendation of the Assembly. Through public consultation this board would review the proposed land use, examine the direct and indirect impacts and consider other development and conservation options available.

The board would have as its mandate the authority to examine specific development and conservation proposals and to make recommendations to the responsible Territorial Minister and the Executive Council in the NWT. Through an administrative arm the board could have the day-to-day authority for issuing land permits, on the understanding that proposals above a certain size would be referred to the board.

Essentially the board could serve as a mechanism which would provide overall direction to the Land Management Policy and programs in the NWT.

C. National Energy Requirements

1. **Initially the GNWT would only wish to assume areas related to oil and gas which are presently managed by the Northern Affairs Program of DIAND, such as the issuance of permits and licences.**
   This would be accomplished by transferring the relevant parts of the Northern Affairs infrastructure presently in Yellowknife and Ottawa to the GNWT.

2. **The Federal Government, through the National Energy Board and/or Energy, Mines and Resources would look after areas such as distribution, production, price, quotas, etc.**
   These are the areas that are traditionally in the national interest and as such would remain in the Federal management area. As an added note, there appears to be other legislation administered by Energy, Mines and Resources that pertains to the retention of Federal control of large scale energy projects such as uranium deposits, gas fields, and pipelines.

3. **Royalties accruing from resource management could be used to offset Federal operating grants to the NWT.**
   This would allow the residents of the NWT to share in the resource revenue. Royalties could also be used to help stimulate other areas of the economy such as tourism. We anticipate that a rational basis for sharing royalties between the two levels of government would be achieved during the negotiations which would establish fiscal autonomy for the NWT. (cf. The earlier section of this chapter on Provincial status.)

4. **Activities related to energy resource development and mining could be incorporated into regional planning.**
   This would involve resources as well as socio-economic planning. Both these planning functions are the responsibility of the GNWT. The proposed Land Management Board could also have a major role.

EXTENT OF FEDERAL RESPONSIBILITY FOR INDIANS

The third fundamental issue in the constitutional development of the NWT is the extent of the Federal responsibility for Indian people.

Frankly we believe that the recent insistence from all quarters of the Federal Government that they have a "special responsibility for native people" is an excuse to perpetuate a large Federal presence in the North which ignores historical facts and present circumstances. The net effect of such an insistence in the NWT will be a greater division among peoples at the community level.

In our analysis we will look at the historical basis for any "special responsibilty", the dilemma created by this insistence, and the practical extent of a Federal role in support of native interests in the NWT.

A. The Historical Basis for a Federal "Responsibility"

Section 91 of the *British North America Act* provides for the "exclusive Legislative Authority of the Parliament of Canada for ... Indians and Lands reserved for Indians."

We find that the reasons for the making of this provision have their roots in the humanitarian and protectionist attitudes towards minority groups of natives that existed in the post-slavery period in Britain. A report of 1837 from the Select Committee on Aborigines, of the British House of Commons advocated the retention of the imperial responsibility for Indians to protect a minority from adverse local interests. The same principle was carried forward to the *British North America Act*, except that it was more narrowly defined to focus on reserves and status Indians.

In the context of the NWT it can not be the "special responsibility" of the Federal Government, and particularly the Indian Affairs Program to protect Indians from "local interests" because Indian people are the local interest. Mr. Drury noted in his speech to the Assembly in October, 1978, that "nowhere else do native people participate as elected people more fully than in the Local Government structures in the NWT today." Eighty per cent of the councillors and ninety per cent of the staff of Local governing bodies are native. The NWT is not the same as the Provinces or even the Yukon where native people are in a minority and where their rights must be protected. In the NWT the native people are protecting their own rights.

There have been misguided statements that the Federal Government is "the trustee of native Canadians." Ironically the Federal Government has been trying for years to downplay any concept of a trustee role, while the native organizations have been trying to insist on it. Research has indicated that there is no evidence in Canadian jurisprudence, unlike the situation in the United States, to support the idea of a Federal trustee role. The *Indian Act* is merely an administrative arrangement, and constitutional experts believe that the much-vaunted Proclamation of 1763 offers privileges that are so flimsy that they "could in all probability be abrogated by a federal order in council without recourse to parliament." (Gerard V. LaForest, **National Resources and Public Property under the Canadian Constitution,** p.160)

Even within the past ten years there has been such a fluctuating interest by the Federal Government in their "special responsibility" that its transitory nature has become all too apparent. We would argue that the only way to protect native interests is by the native representation we already have in our Assembly, a representation that does not distinguish between "status" and "non-status", by local adaptations to meet native needs and by safeguarding native rights in each piece of Territorial legislation.

B. The Dilemma of a Federal Responsibilty for Indians

The essential dilemma of a Federal insistence on its "special responsibility" for Indian people is that it is creating further divisions among the peoples of the NWT. It had been agreed in 1969 that Indian Affairs would **not** continue its separate operation in the NWT, and the "one delivery system" that the Minister of Indian Affairs is now trying to achieve in the Yukon became a reality at that time in the NWT.

It was contrary to all the understandings that existed when the GNWT moved to

Yellowknife that the Indian Affairs office was re-established in 1972. It had and still has no clear mandate, function or purpose.

Even Indian Affairs admitted in a September, 1978, report that "most communities (in the NWT) draw no distinction between status and non-status Indians." Yet Indian Affairs continues to provide core funding for band councils that have no functions and encourages separate band economic development committees in communities of a few hundred people. Meanwhile the GNWT is trying to support those same communities in their quest for one local governing body, including a recognition of the identity of the band council. It makes no sense for the GNWT and the communities to have to counteract forces put in motion by Indian Affairs officials who are desperately trying to find a role for themselves.

And what is the role of Indian Affairs in the NWT? There is only one reserve, and even there the Territorial Government provides all social, educational, recreational and municipal services, including the band manager.

The same Indian Affairs report referred to above admitted that whereas in the South the purpose of core funding is to build up around it "specific programs available to Band Councils ... (these) conditions do not apply in the NWT. We have no programs that can be transferred to Band Council administration — not even a recreation program. All such services are provided by the Territorial Government ..."

In order to justify its existence in the NWT, Indian Affairs is even using other Federal departments to generate division and discord at the community level. An example is the use of Employment Canada funding so that band councils can set up a stronger administration with a band manager as well as a band secretary.

At the same time as the GNWT is trying to respond to community requests for one Local governing body, Indian Affairs is making this task more difficult by institutionalizing differences, aggravating community conflict and aiding and abetting the forces of confusion.

The same disregard for basic community interests is also evident in the exercise of "special responsibilities" through the land claims process. Visiting negotiators from Ottawa have no chance to listen to and understand the communities and their predominantly native Local Councils. We submit that the land claims process and Mr. Drury's emphasis on stronger Local Governments are on a collision course, unless it is recognized that land claims should be negotiated from the community level up, with the Territorial Government as a mediator between local demands and Federal interests.

The question of a Charter of Human Rights for the NWT as proposed by Mr. Drury, has also been given careful consideration by the Assembly. We realize that Mr. Drury's reasons for proposing such a charter were essentially to protect native rights. We have discovered however, that this is a legislative area already occupied by the *Canadian Human Rights Act*. Our approach, therefore, must be to write our legislation in such a way that there are provisions for choice and adaption at the Local level of government. We deal with this matter in more detail in Chapter VII.

We wish to make clear at this point, however, that we believe that each piece of legislation and each Act of the bureaucracy should protect the rights of all native northerners, and, as we represent all the people of the NWT, we will ensure that their various rights are protected.

C. The Practical Extent of the Federal Role

It is our opinion that any "special responsibility" of the Federal Government for Indian people of the NWT should be to monitor legislation in order to ensure that native rights are protected, and to act in support of native interests in land claims negotiations. The Indian Affairs Program should run no programs in the NWT, though it might have a representative to assist in the land claims process.

Summary

We believe that much of the mistrust and overgoverning of the NWT follows directly from a failure to recognize that responsible government is a right, that the Territorial administration of resources is an essential component of community-based economic development, and that an undue insistence on "special responsibilities" for Indians causes unnecessary divisions within communities.

CHAPTER II: THE SUPREMACY OF THE LEGISLATIVE ASSEMBLY

The primary objective of the Assembly is the establishment of responsible government immediately following the 1979 Territorial election.

The Assembly recognizes that the position of supremacy it will occupy within such a system of government will require acceptance by it of significantly increased responsibilities. The Assembly has therefore identified the following changes which are essential to the proper carrying out of its new role.

A. Legislation Relating to Executive Committee

In 1974 the then Minister of Indian and Northern Affairs informed the House of Commons, while introducing amendments to the *Northwest Territories Act*, that reference to the Executive Committee would be left out of legislation at that time so the committee could be allowed "to grow and mature within the unwritten constitution of the NWT." The Assembly believes that this process of growth and maturation, detailed in Chapter III, has now reached a stage where it is appropriate to formalize the existence of an Excutive Committee.

It is significant, however, that it should be the Assembly which seeks to formalize the Executive Committee. Throughout history and in countries all over the free world it has been the elected members who have said they were ready to take control of the Executive branch of government. Unfortunately it has also been true very often the appointed powers have reacted strongly and negatively. We trust we will not be faced with such a reaction.

Our progress to date in constitutional development has been to recognize in several ordinances the existence of an "Executive Member." Now we are prepared for the next step in implementing responsible government. We see the need to create an Executive on which every member is an elected representative. Then we will have an Executive which will clearly be seen to be responsible to all the elected Members and, through them, to the electorate.

The Assembly therefore believes that it is important to create legislation confirming existing practices and giving statutory recognition to the Executive Committee.

To this end an appropriate amendment to the *Council Ordinance* (Appendix I) will be introduced in the Assembly.

B. Selection of Executive Committee Members and Their Responsibilities

Under existing practices Members of the Assembly are nominated by their colleagues for appointment by the Commissioner to the Executive Committee. The Commissioner has, in some cases, reserved to himself the right to select the department or responsibility which will be assigned to a particular individual.

In a system of responsible government, where party politics have not emerged, the right of the Assembly to select the Members of the Executive Committee and to determine

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In a system of responsible government, where party politics have not emerged, the right of the Assembly to select the Members of the Executive Committee and to determine

their responsibilities can not be questioned. Similarily the Assembly must consent to any reallocation, reassignment or terminiation of responsibilities.

Immediately following the 1979 Territorial election the Assembly will therefore expect its recommendations concerning the appointment of individuals to the Executive Committee and their assignments to be binding on the Commissioner and any changes in or termination of their assignments to be subject to consultation with the consent by the Assembly.

The Assembly will also expect to set the remuneration of Executive Members by Territorial Ordinance.

The Assembly recognizes, of course, that if political parties emerge in the Territories the responsibility for naming Cabinet Members and identifying their responsibilities would become the functions of the majority party leader.

C. Support Staff for M.L.A.'s

Members have in the past stressed the need for adequate research and administrative support staff responsible to the Assembly.

The additional responsibilities and the increased volume of work which will devolve upon all Members of the Assembly as a consequence of the adoption of the recommendations of this document will significantly increase the need for such assistance.

The Assembly considers that this need can be met most effectively by the establishment of a Parliamentary Internship Program. Such program, patterned after the Provincial models which already exist, would provide the required services to non-Executive Members.

The Assembly will therefore recommend to the Territorial Government Administration the establishment of such a program to be operated under the direction of the Clerk's office.

D. Clerk of the Assembly and Support Services

In the Provinces and in the Yukon Territory the Clerk is responsible solely to the Speaker and services to the Assembly are provided under the direction of the Office of the Clerk. This arrangement ensures that the needs of the Assembly are adequately and efficiently met and that the necessary levels of expertise and specialization are available to Members.

The Assembly therefore recommends that similar arrangements be established immediately in the NWT making the Clerk, and other officers and staff of the Assembly, responsible solely to the Assembly.

E. Further Constitutional Change

The major concerns of the Assembly over the next four years will be the changes in its legislative jurisdiction. This subject is dealt with in detail in Chapter IV, but because of its importance to the supremacy of the Assembly in constitutional change, it is mentioned here.

The Assembly will expect that direction for and approval of any changes in the *Northwest Territories Act* will be given by the Assembly.

CHAPTER III: THE REALLOCATION OF THE EXECUTIVE AUTHORITY

The previous chapter emphasized the supremacy of the Assembly in constitutional change, but the Assembly recognizes that this essential state of affairs can only be achieved by a considerable reallocation of the existing Executive authority. The purpose of this chapter is to examine this reallocation in some detail.

We believe, however, that reallocation of the Executive authority has been in progress for some time. Much of what is required to firmly establish responsible government has already been achieved. In order, therefore, to set our recommendations in the perspective of precedents and existing practice, this chapter begins with an examination of what has developed over the last five years. The explanation of our recommendations relating to the Commissioner, Deputy Commissioner, Assistant Commissioner and the composition and powers of the Executive Committee or Council will then follow.

A. CHANGES IN EXECUTIVE AUTHORITY: 1974-1979

In March, 1974, Parliament passed a number of amendments to the *Northwest Territories Act* designed to further the evolution to responsible government in the NWT. These amendments provided for a fully-elected Council of fifteen Members with one of the Members to preside as Speaker. During debate on second reading of the bill containing these amendments, the then Minister of Indian Affairs and Northern Development, the Hon. Jean Chrétien, announced his intention to have two elected Councillors appointed to the Executive Committee, with each of them being given the responsibility for one or more departments of the GNWT.

On April 22nd, 1975, the then Minister of Indian Affairs and Northern Development, the Hon. Judd Buchanan, instructed the Commissioner of the NWT to reconstitute the Executive Committee of the NWT to consist of the Commissioner, the Deputy Commissioner, the Assistant Commissioner, and two Members of Council who were to be nominated by the newly-elected Council at their first session and appointed by the Commissioner to serve during pleasure. The Minister's directive was clear that the Commissioner was to seek the advice of the committee and especially its elected Members and to give this advice fullest possible consideration in determining the course of action to be followed. The Deputy Commissioner was to be named Vice Chairman of the Executive Committee to act as Chairman in the absence of the Commissioner.

Elected Members of the Executive Committee would be removed from the committee and replaced with othe Councillors on a formal motion of the Council, and should be prepared to serve on the Executive Committee beyond the life of Council until their successors were appointed. Elected Executive Members were to serve as full time Members of the committee, paid from the Consolidated Revenue Fund. As is the practice for all holders of high public office, Councillors on the Executive Committee were instructed to divest themselves of financial interests and terminate any activities that might give rise to conflict of interest with their positions on the Executive of the GNWT.

When the reconstituted Executive Committee first met in May of 1975, it thus consisted of three appointed and two elected Members. In October of 1976, the then

Minister of Indian and Northern Affairs, the Hon. Warren Allmand, authorized the appointment of a third elected Member to the Executive Committee, giving a total membership of six. This composition remains unchanged.

The Executive Committee developed and published a system of practices and procedures, similar to those which were in effect in the Yukon at that time. Early in its existence the Executive Committee also adopted the procedure of voting as a means of deciding each issue which came before it. With the Commissioner acting as Chairman, the elected Members thus have a majority of three elected as against two appointed Members when questions are voted on. Each"decision" of the Executive Committee is formally presented to the Commissioner as a written recommendation for his final decision. The record shows that the Commissioner has followed these recommendations of the Executive Committee with few exceptions.

Elected Members are presently responsible for all program departments except Education, as well as carrying responsibility for land claims and constitutional development.

In the period 1975 to 1979 no service departments were under the supervisory control of elected Executive Members, but during the budget session in January, 1979, elected Executive Members for the first time spoke to and defended the budget of all government departments, both program and service.

Throughout the life of the Executive Committee as it is presently constituted, two subcommittees of the Executive Committee have operated; the Executive Subcommittee on Finance and the Executive Subcommittee on Legislation. The membership of these subcommittees has been made up of all Executive Committee Members with the exception of the Commissioner. They have been assisted by appointed advisers as appropriate to each committee. The Assistant Commissioner has chaired the Executive Subcommittee on Finance and the Deputy Commissioner, the Executive Subcommittee on Legislation. The Executive Subcommittee on Legislation is charged with the responsibility for overseeing the development and preparation of legislative programs. The Executive Subcommittee on Finance has responsibility for the development of the government's budget, including the negotiation of that budget with the Government of Canada and the management of the financial process during the fiscal year. Elected Members of the Executive Committee have, since 1976, been a majority on each of these subcommittees.

B. ROLE AND FUNCTION OF THE COMMISSIONER: 1979-1983

"Priorities for the North" and other formal and informal statements in the Assembly over the past four years have expressed our belief that the role of the Commissioner must evolve into that of a Lieutenant Governor. By this we mean that the function of the Commissioner must cease to be that of the Chief Executive of the GNWT and become increasingly that of a ceremonial figurehead. We believe that this should occur during the life of the 9th Assembly, 1979-1983.

The following paragraphs trace the historical and legal basis for our opinion, compare the roles of the Commissiner and Lieutenant Governor as they exist today, and indicate the changes which must take place in the NWT so that the role of Commissioner becomes in fact, that of a Lieutenant Governor.

1. The historical and legal basis for seeking a decline in the powers of an appointed Chief Executive

In pre-Confederation and post-Confederation Canada, and in the old NWT, the development of responsible government was accompanied by a transfer of power from the appointed Chief Executive to the elected Members of the Legislature. In those days the Chief Executive was called either a Governor or a Lieutenant Governor. His power was shared first with appointed advisers, then with advisers from the elected Legislative Assembly. When it was established that these advisers were accountable to the elected Legislative Assembly, it was clear that they could no longer be accountable in fact, to the Lieutenant Governor as well.

Similarly, as effective decision-making power shifted from the formal Council chaired by the formal Chief Executive to the Cabinet of political advisers meeting alone, the powers of the Lieutenant Governor declined correspondingly.

The *British North America Act* provides that Lieutenant Governors be appointed by the governor in Council and hold office at the pleasure of the Governor in Council. The formal Executive powers of the Lieutenant Governor are not clearly defined in the *British North America Act*, simply because of the transfer of power that was still going on from appointed officials to elected representatives.

In the Provinces since Confederation the Executive powers of the Lieutenant Governors have been almost entirely taken over by the Provincial Premiers and their Cabinets.

Today the functions that Lieutenant Governors perform are principally to summon and dissolve the Legislature, assent to or withhold assent from bills, and act as a representative of the Sovereign. A Lieutenant Governor is also empowered to reserve a bill passed by the Assembly for consideration by the Governor General. However, even in exercising his Executive or legislative functions, the Lieutenant Governor acts almost invariably on the advice of his chief adviser, the Premier, and the Premier's Cabinet.

2. A comparison of the status of the Commissioner of the Northwest Territories and a Lieutenant Governor

Like a Provincial Lieutenant Governor, the Commissioner is the official head of the Executive branch of the government and performs Executive and legislative functions that accompany this role. Like the Lieutenant Governor, the Commissioner is formally an officer of the Federal Government. Unlike a Lieutenant Governor, the Commissioner is not formally a representative of the Sovereign.

The formal constitutional position and powers of the Commissioner of the NWT are derived primarily from the provisions of the *Northwest Territories Act*.

Although it specifically designates the Commissioner as "Chief Executive Officer", the *Northwest Territories Act* refers to this officer as "Commissioner" not as Lieutenant Governor. The Commissioner is appointed by the Governor in Council as is a Lieutenant Governor; both the Commissioner and the Lieutenant

Governor are paid by the Federal Government, but while the Lieutenant Governor's salary is fixed by Parliament, the Commissioner's salary is by the Governor in Council. Under the *Northwest Territories Act* the Commissioner is given the responsibility to "administer the Government of the Territory under instructions from time to time given him by the Governor in Council or the Minister." There is no provision in the *Northwest Territories Act* requiring that the Commissioner consult with advisers, or an advisory body, when carrying out his Executive functions.

The Commissioner is defined as a constituent part of the Assembly and is empowered to convene sessions of the elected Assembly of the NWT. Unlike a Lieutenant Governor, the Commissioner has no statutory powers to dissolve the elected Assembly; that power is conferred on the Governor in Council acting in consultation with the Assembly Members. The Commissioner, like a Lieutenant Governor, has the exclusive power to authorize the introduction of tax and other money measures to be passed by the Assembly. Unlike the Lieutenant Governor, the Commissioner has no express power to assent or refuse assent to a bill passed by the Assembly; however, these powers are implicit in the definition of the Commissioner in Council as "the Commissioner acting by and with the advice and consent of the Council." Unlike a Lieutenant Governor, the Commissioner has no power to reserve a bill passed by the Assembly for consideration by the Governor General.

The Commissioner is subject formally to instructions from "time to time" that can issue either from the Governor in Council or the Minister of Indian Affairs and Northern Development. The instructions to the Lieutenant Governor are authorized by his Commission, a document made in the exercise of prerogative power, and can issue either from the Governor General or the Governor in Council.

Compared with those of the Lieutenant Governor, the formal and effective powers of the Commissioner of the NWT have changed relatively little to date. In most respects, the Commissioner remains the effective as well as the formal head of the Executive branch of the Territorial Government. The Commissioner also remains very much an agent or representative of the Federal Government in the NWT.

3. **Specific areas where the powers of the Commissioner must be reduced so that he becomes a Lieutenant Governor**

   a) **Advice from the Elected Executive**

   The Lieutenant Governor of a Province is under an effective constitutional obligation to discharge his Executive functions according to the advice of an elected Premier and Cabinet from the legislative branch of government. The Commissioner will therefore be required to consult the Executive Committee in discharging his responsibilities under the *Northwest Territories Act*, and be bound by their recommendations. This obligation will initially be less onerous than it is in the Provinces because until the *Northwest Territories Act* is revised, the Commissioner can only be bound unless he is instructed specifically to the contrary by the Minister of Indian Affairs and Northern Development or by order in council. Within the next four years we would

expect, however, that the *Northwest Territories Act* would be revised, that the Commissioner would be named a Lieutenant Governor, and that he would be bound by all the decisions of an Executive Council.

b) **Participation in the Executive Committee**
The Lieutenant Governor does not sit with the Provincial Premier and his Cabinet in Executive sessions, even though decisions are carried out in his name. The voluntary withdrawal of the Commissioner from the Executive Committee would therefore assist in the process of attaining responsible government.

In any event we would expect, immediately following the election of the 9th Assembly, that the membership of the Executive Committee would consist exclusively of elected Members and that the elected Executive Members would elect their Chairman from among their number.

c) **Departmental Supervision**
Unlike the Lieutenant Governor, the Commissioner retains direct supervison over some units of the Administration of the Territorial Government. While most of the Territorial departments are entrusted to Executive Committee members other than the Commissioner, the guidelines currently governing the Executive Committee stipulate that the management of these departments is subject to the direction and control of the Commissioner. The functions of the Commissioner in this respect resemble those of a Provincial Premier more than those of a Lieutenant Governor, and this control of the Territorial Government Administration must pass to the hands of elected Executive Members following the election of the 9th Assembly.

d) **Statutory Instruments**
In the Provinces, it is not customary to have the power to enact statutory instruments conferred on the Lieutenant Governor alone. Such power if conferred by statutes on the Lieutenant Governer in Council (the Lieutenant Governor acting in conjuction with the Executive Council, that is the Provincial Cabinet). Cabinet consent to a proposed regulation is a mandatory requirement imposed by the governing legislation. In the NWT, power to enact statutory instruments is conferred by ordinances on the Commissioner alone, not on the "Commissioner in Executive Committee." As a result, any requirement that any draft statutory instrument approved by the Commissioner have prior Executive Committee approval is a requirement which the Commissioner would have to impose on himself.

Such a requirement is another logical step toward responsible government in the NWT that should be taken in the near future.

e) **Federal Control of the Commissioner**
Constitutional practice has not appreciably lessened the control over the Commissioner by the Federal Government. Unlike the Lieutenant Governor, the Commissioner remains a Federal civil servant. Unlike the Commission and instructions issued to the Lieutenant Governor, the "instructions from

time to time" given to the Commissioner are generally informal, can be detailed and frequent, and can bear on major policy issues affecting the GNWT.

In the event that the recommendations to the Commissioner from the Executive Committee conflict with instructions issued to him by the Minister under the *Northwest Territories Act*, the instructions provided by the Minister prevail.

A further required move, in the evolution of responsible government in the North, is thus to diminish the strong elements of Federal control of the Commissioner which now exist.

f) **Commissioner as Representative of the Sovereign**
A final step in the evolution of the role of the Commissioner toward that of Lieutenant Governor is formal recognition by Parliament of the Commissioner as the representative of the Sovereign in the NWT, and a formal change of title to Lieutenant Governor. This move would be in keeping with the tradition of responsible government which is the Canadian constitutional framework.

C. THE POSITIONS OF DEPUTY AND ASSISTANT COMMISSIONER

The Assembly is firmly of the opinion that the positions of Deputy and Assistant Commissioner should not be filled when they are vacated by the present incumbents.

We do not see that there is any logical development from Deputy Commissioner to Premier, as there is from Commissioner to Lieutenant Governor. The position of Premier evolves from the role of Chairman of the Executive Committee.

We recognize that there may be a need for temporary and varying appointments of persons to act during the absence of the Commissioner from his office for whatever reasons. These temporary appointments or assignments would be of the kind of person who would later be appointed *pro tem* during the absence of a Lieutenant Governor. The kind of person we have in mind would be a Supreme Court Judge.

D. THE EXECUTIVE COMMITTEE

1. **Composition**
We have already stated that we expect, immediately following the election of the 9th Assembly, that the Executive Committee will consist exclusively of elected Members, recommended for appointment by the Assembly.

We also expect, at that time, an increase in the number of Executive Members. We believe that there should be no less than five and no more than seven.

2. **Powers and Responsibilities**
The Assembly is convinced that the ability of the elected Members of the Executive Committee to assume greater responsibility has been clearly demonstrated over the last five years.

We therefore believe that, following the 1979 Territorial election, all departments and agencies of the Territorial Government must be assigned to an elected Member of the Executive Committee. This may, in turn, be related to a reorganization of departments.

As far as the operating procedures of the Executive Committee are concerned, we believe that these must clearly be decided by the Executive Committee itself. We reject any suggestion that these should be imposed on the committee. However the Assembly does consider that the present practices of reaching decisions by a vote and of referring the decisions of the Executive Committee to the Commissioner for signature should be continued.

Once all of these matters have been acted upon the Assembly considers that it would be more appropriate to call the Executive body a "Council" rather than a "Committee". The practice of calling elected Executive Members "Ministers" should also be formalized.

3. **Support Services**

The Assembly fully recognizes that the departure from the Executive Committee of the Deputy Commissioner and the Assistant Commissioner will remove from it individuals who possess a very detailed knowledge of government operations and who because of this knowledge make an important contribution.

As a means of providing the Executive Committee with the required levels of technical expertise and support services the Assembly believes that the existing support operation should be substantially upgraded. In the Provinces the individual in charge of the Executive Council secretariat is usually a highly experienced officer at the senior Deputy Minister level who acts as an advisor to the Executive Council and who directs a comprehensive support operation. The Assembly believes that immediate steps should be taken to begin now an evolutionary process by which the present position of secretary to the Executive Committee and the support services responsible to him will, by 1981 or 1982, arrive at levels of expertise and capability on a par with their Provincial counterparts.

The Assembly also considers that each elected Member of the Executive Committee must be provided with an Executive Assistant. This will enable them to devote their full attention to their Executive responsibilities.

In Chapter II we detailed our proposals for support services for those Members who are not Members of the Executive Committee.

CHAPTER IV: THE REALLOCATION OF THE LEGISLATIVE AUTHORITY

The *Northwest Territories Act* should be a useful and living tool in the constitutional development of the NWT, but instead it is a strait jacket and an impediment to growth and change. The old *Northwest Territories Act* did accommodate growth. It had, for example, an "ingenious mechanism" which allowed for the establishment of a new electoral district for every additional one thousand people in the Territories. The present Act has no such concept.

The Assembly is firmly of the opinion that the Act must be redesigned, so that it can assist us in moving along the path to Provincial status. The new Act must recognize the dynamic character of the North today, a North which is not dying but growing.

In this chapter we will make our proposals for change by reviewing the extent to which our present legislative authority is comparable to that of a Province under Section 92 of the *British North America Act*. We will then review the restraints placed on the exercise of our legislative authority at present, and suggest how this can be changed.

A. COMPARISON OF THE LEGISLATIVE AUTHORITY IN THE NORTHWEST TERRITORIES AND IN A PROVINCE

The bulk of the legislative authority of the Commissioner in Council in the NWT is contained in Section 13 of the *Northwest Territories Act*. It is significant that this section is closely patterned on Section 92 of the *British North America Act*, which details the legislative authority of the Provinces. The "classes of subjects" enumerated in paragraphs (a), (b), (c), (e), (g), (h), (i), (j), (u), (x) and (y) of the *Northwest Territories Act* are in fact, with only minor variations, duplications of heads 2, 4, 8, 9, 12, 13, 14, 6, 7, 16 and 15 of Section 92.*

* See Appendix II

The overwhelming similarity of the two provisions irresistably focuses attention on the differences in the lists, which are of three varieties:

1. Section 92, classes of subjects **not** included in the *Northwest Territories Act*;
2. Section 92, classes of subjects which are included in the *Northwest Territories Act* in an **altered** form;
3. Classes of subjects in the *Northwest Territories Act* that do **not** appear in Section 92.

The following paragraphs will review these differences.

1. **The classes of subjects totally withheld from the Commissioner in Council** are heads 1 and 5, the power of a Province to amend its Constitution except "as regards the Office of the Lieutenant Governor" and the "management and sale of the public lands belongs to the Province and of the Timber and Wood thereon." Clearly these two heads, from the Territorial view, must be regarded as indicators of whether or not we have colonial status. It is also important to know whether or not the power to legislate in relation to those matters necessarily infers Provincial status.

a) **Power to Amend the Constitution**

The Provincial Constitutions are treated in Sections 58 to 90 of the *British North America Act* and consist, briefly, of provisions respecting the Office of Lieutenant Governor; the appointment of an Executive Council; the location of the seat of government; the creation of a Legislature consisting of the Lieutenant Governor and one or, for Quebec, two Houses; the styling of the House; the number of electoral districts and thus the size of the Legislative Assembly; the summoning of Legislative Assemblies; disqualification of a person receiving a salary or profit from the Province from sitting as an M.L.A.; continuance of existing election laws; duration of Legislative Assemblies; requirement of yearly session; election and duties of a Speaker, quorum, mode of voting, treatment of money bills, assent, disallowance, and signification of pleasure on bills reserved.

The *Northwest Territories Act* has provisions that parallel many of the *British North America Act* provisions just outlined.

i) **Sections 3 to 6** deal with the Office of Commissioner and thus, even on the Provincial model could not be amended locally.

ii) **Section 7** empowers the Governor in Council to prescribe the seat of government and to change the location from time to time. The section should be rewritten to indicate that Yellowknife is the seat of government. The power to amend is as unlikely to be exercised by the local Legislature as it is by the Governor in Council.

iii) **Section 8** creates the Council, sets the number of Members, fixes the duration of a Council, gives the Governor in Council power of dissolution, and authorizes the Commissioner to issue writs of election.

All of these provisions should be subject to amendment by the Council directly, being matters integral to the functioning of Council and involving decisions that must be left to the elected representatives if parliamentary democracy is to flourish. Amendments are required to extend the life of Council from four to five years, to increase the membership of Council, and to place nominally, in the Commissioner, the power of dissolution. The issue of writs, like the power of dissolution, should be exercised by the Commissioner on the advise of the Members of Council.

iv) **Section 10** must be amended to permit the Commissioner in Council, not the Governor in Council to prescribe the oaths taken by Members before assuming office.

v) **Subsection 11(2)** treating the place where Council sessions shall be held, is an internal matter. Although it is unlikely that Council will sit outside of Yellowknife in the future, the decision should be left to the members.

vi) **Other provisions of Section 11** dealing with the Office of Speaker, fixing a quorum, and providing for the number of sessions, should be within the legislative authority of the Commissioner in Council.

In summary, after comparing the provisions of the *Northwest Territories Act* to the "Provincial Constitution" sections of the *British North America Act*, it is clear that conferring authority on the Commissioner in Council to amend the Constitution, except as regards the Office of Commissioner, would allow a respectable level of autonomy over matters that, in the Canadian political context, must be regarded as a matter for self-determination by the Legislature. It is equally clear, considering the subject matter of the so-called "Constitution" that the amending power does not raise an inference of Provincial status.

However, to allow the Council to amend the constitutional provisions would be symbolic recognition that the political structure of the NWT is not static and that there has been a significant growth in the direction of responsible government.

b) **"Management and Sale of Public Lands Belonging to the Province..."**

Head 5 of Section 92 of the *British North America Act* isolates the vital difference between the Territories and the Provinces. There is widespread acceptance that, until there is a "Crown in right of the Northwest Territories", ownership of the lands in the NWT will be vested in Her Majesty in right of Canada. However, there is much dissatisfaction with the failure of the Federal Government to transfer administration of lands to the Commissioner as provided for in Section 46 of the *Northwest Territories Act*. The transfer of control to the Commissioner "for the beneficial use of the Territories" of all land in the NWT would permit the development of forest resources, agricultural policy, long-range municipal planning and environmental protection policies.

Because the ownership of the land is not affected by the transfer, Canada would simply withdraw lands required to satisfy land claims negotiated with the native peoples. The active participation of the GNWT in the negotiations is essential to provide a balanced perspective based on an appreciation of the competing claims to some lands.

2. **Classes of subjects in Section 92 of the *British North American Act* that are included in the *Northwest Territories Act* in altered form**

These classes are the borrowing power and power to incorporate companies as well as head 10, "local works and undertakings."

a) **Borrowing Power**

The Provinces are authorized to borrow on their sole credit. The NWT borrowing power is subject to the approval of the Governor in Council. This restriction should be removed when the ownership of land and resources is transferred.

b) **Power to Incorporate Companies**

The Provincial power to incorporate companies is subject to the limitation that the companies have Provincial objects. Paragraph 13(f) of the *Northwest Territories Act*, "the incorporation of companies with territorial objects, including tramways and street railway companies but excluding railway, steamship, air transport, canal, telegraph, telephone or irrigation companies"

appears to be an amalgam of heads 10 and 11 of Section 92 with the additional restriction, not imposed on the Provinces, preventing the incorporation of telephone, irrigation or air transport companies. The Act should be amended to remove these additional restrictions.

3. **Classes of subjects included in the *Northwest Territories Act* but not included in Section 92 (or 95) of the *British North America Act***
The classes of subjects include: scientists' and explorers' licences, fur export tax, preservation of game, roads and highway construction and maintenance, intoxicants, controverted elections and expenditure of money.

Section 14 of the *Northwest Territories Act* specifies that nothing in Section 13 is to be construed as giving greater powers to the Commissioner in Council than are given to the Provinces under Section 92 and 95 of the *British North America Act*. In order to comply with that interpretation it would seem that the additional subject heads in the *Northwest Territories Act* must be subsumed under the *British North America Act* subject heads that are not included in the *Northwest Territories Act*, namely 2 and 5, constitutional amendment and management and sale of public lands of the Province. The anomalies are "intoxicants" and "expenditure of money", both of which classes are afforded further treatment in later sections of the *Northwest Territories Act*, and should perhaps be deleted from Section 13.

B. THE EXERCISE OF THE LEGISLATIVE AUTHORITY

1. **Controls**
A number of control mechanisms limits the full exercise of legislative authority by the Commissioner in Council.

a) **The Inferior Status of Territorial Statutes** is apparent from the opening words of Section 13 which make the ordinances "subject to this Act and any other Act of the Parliament of Canada." Thus, even though "property and civil rights" is a class of subject assigned to the Commissioner in Council, the specific matter of "labour relations" can not be legislated because the *Canada Labour Code* does not specifically exclude its application to the NWT. It is open to speculation whether this result is intentional or merely results from a failure of the Commissioner in Council to exercise its jurisdiction before the question reached the Supreme Court of Canada. As well as raising the impediment of any existing Federal Act, Section 13 ensures that a newly enacted Federal statute can override an existing ordinance.

b) **The Power of Disallowance**
A further control is the power of disallowance which may be exercised by the Governor in Council. There is no record of the use of this section.

c) **Instructions from the Minister**
In practice the real control of the legislative function has been exercised through prior scrutiny by the Minister and consequent instructions to the Commissioner. This practice is totally unacceptable and must be discontinued immediately.

d) **Assent**

The *Northwest Territories Act* does not provide that a bill must receive "Assent" before becoming law. By convention, bills are assented to by the Commissioner. This is consistent with our view that the Commissioner's role should evolve into that of a Lieutenant Governor.

2. **Proposal for Clarifying Legislative Authority in the Northwest Territories**

Assuming that Territorial legislation must be of the kind characterized as "inferior" until a sovereign Legislature is created and provincehood achieved, we have sought a more straightforward device for clarifying our legislative authority. The present scheme creates an uncomfortable level of uncertainty as to the state of the law, for example: Has the *Canadian Human Rights Act* nullified the *Fair Practices Ordinance*? To what extent does the *Official Languages Act* apply to the GNWT?

We recommend that ordinances of the NWT should be subject only to Acts of Parliament that include a specific clause respecting the application of the Act to the NWT. The preamble of Section 13 should be amended to accomplish this.

C. NOMENCLATURE

In conclusion we would like to refer to a matter which is symbolic, but which would also provide evidence of growth and change in the NWT.

Our legislative body is, by the *Northwest Territories Act*, styled as a "Council." However, we choose to be known as a "Legislative Assembly", having concluded that the word "Council" carries a suggestion of colonial status which is not applicable to the GNWT today, particularly when it is a fully elected Assembly. The Assembly as it existed before 1905 is a direct precedent for such nomenclature. Clearly ths change of name and style would not in itself affect the constitutional or legal status of the government.

We have similar objections to the word "Ordinance" to describe a statute of the NWT and it is proposed that the word "Act" be substituted.

D. REVISION OF THE *NORTHWEST TERRITORIES ACT*

The *Northwest Territories Act* must be completely revised before the election of the 10th Assembly to provide a constitutional framework like that found in Sections 58 to 90 of the *British North America Act* for the Provinces.

We should have the authority to amend our own Constitution, except with respect to the Office of the Lieutenant Governor.

The Assembly is of the opinion that its Members should be full and equal participants in the revision of the *Northwest Territories Act* from its commencement to its conclusion.

It is our sincere belief that we should also sit as full and equal participants in any discussions on the future shape of Confederation. We find it ironic that we should be seeking that type of participation while others appear to be only too willing to surrender what we so earnestly desire.

CHAPTER V: ECONOMIC DEVELOPMENT AND THE REALLOCATION OF RESOURCE RESPONSIBILITIES, SECTOR BY SECTOR

This chapter explains in more detail than was possible in Chapter II why we are seeking additional responsibilities in the administration and management of water, forests, minerals, oil and gas, inland fisheries, parks, the environment and power.

The basic issue as far as the Assembly is concerned is that we must have more responsibility in these areas in order to promote and foster economic development in the NWT. We must also be in a position to strike a balance between large scale and small scale economic development, so that northern people can participate in and benefit from planned economic growth.

A. LAND

The main arguments for having the administration of lands transferred to the GNWT, together with our participation in a Land Management Board, were contained in Chapter II.

It is necessary to emphasize, however, that whereas the responsibility for the administration of land formally rests with the Department of Indian Affairs and Northern Development, the Territorial Government is involved in much of the work in the lands area. The result is an unnecessary duplication of money and manpower which is difficult to support at any time, and certainly in times of restraint. The Territorial Government has some of the organization and much of the experience, and we see no reason why the public should be inconvenienced by having to deal with two offices in relation to land matters when one would suffice.

Organizationally the GNWT has had its own Town Planning and Lands office since 1968. In 1969 DIAND moved its Federal Lands office to Yellowknife and the two offices could easily be amalgamated. Through the Federal-Territorial working agreement and committees, and in spite of the unwise suspension of the Block Land Transfer Program in 1978, Territorial officials remain deeply involved in all land matters including land use planning on crown lands.

Where Territorial Government officials are involved they are able to provide more immediate and responsive decisions to the public on land matters such as notifications of titles to the Yellowknife Land Titles office, town planning considerations, legal survey approvals, land assembly and site development.

Where administrative matters have been put under Territorial control, further devolution to the Local level of government has been possible. One example is the Municipal Lands Policy, encouraging community management of lands. A Quarrying Policy is also ready for review and this would allow for quarry pits to be community operated.

We therefore recommend that the Governor in Council issue an order transferring the administration of crown lands to the GNWT for the beneficial use of the Territories. We have also recommended that the entire DIAND office in Yellowknife be transferred to Territorial control.

We would not expect the transfer of ownership of crown lands and resources to take place until we have achieved Provincial status.

B. WATER

The *Northern Inland Waters Act* states clearly who has authority over water in the NWT. Section 9, however, seeks to draw a distinction between the interests of Canadians and the particular interests of the residents of the NWT. In charging the Water Board with its responsibility it states "The objects of the board(s) are to provide for the conservation, development and utilization of the water resources of the ... NWT in a manner that will provide the optimum benefit for all Canadians and for the residents of the ... NWT in particular."

This Assembly approves of the Water Board as a model to guarantee local participation in reaching fundamental resource decisions. We do not approve, however, of the extent to which Territorial decisions are subject to confirmation by a Federal Minister.

We do not accept that there is any firm basis for a "national interest" in our water resources. We have no significant streams or rivers that flow out of the NWT. Only one river, the Liard, is navigable across our boundary. We are of the opinion that the board's decisions should be subject to confirmation by a Territorial Executive Member and that all the members of the NWT Water Board, including the Chairman, should be appointed by the Commissioner in Council. In addition all the technical resource required for the management of northern waters should serve the board directly, from a northern base of operations.

C. FORESTS

The importance of forest management in the NWT has been recognized by the enactment of a *Forest Protection Ordinance*. This ordinance provides the Commissioner with the power to appoint staff to ensure that forest protection takes place. In fact, it is the Department of Indian Affairs and Northern Development that has the staff, yet they have no timber management policy, no reforestation program, nothing that will stimulate economic development.

We recommend that the staff and funds of DIAND in relation to forest services should be transferred immediately to the GNWT. The necessary Territorial legislation is in place and we should be the ones to oversee its administration.

It is also worth noting that in the absence of an effective forestry program, the forests of the NWT presently provide much more employment and revenue in the form of fur than in the form of timber. It is essential that we have a proper balance between forestry development and the trapping industry. This can best be achieved by an integrated forest program under our control.

The responsibility for forest protection should also be completely within the Territorial Government's domain. On the matter of timber management, since very little is now taking place in the NWT, the expertise should be developed within the GNWT. We ask then for the authority to establish policy and programs to manage forests and timber in a manner that best meets the needs of the peoples of the forested areas of the NWT.

D. MINERALS

The Assembly has already argued that the administration of resources regulated under the *Territorial Lands Act* and the *Northern Inland Waters Act* should be transferred from the Federal to the Territorial Government. This transfer of administrative authority would include responsibility for administering all regulations under these Acts which affect the mining industry, such as the Territorial lands regulations, the Territorial quarrying regulations, the Territorial timber regulations, and the Territorial dredging regulations. It would also include responsibility for administering the Territorial ordinance involving mining safety inspections, as well as the related Acts and regulations presently administered by Energy, Mines and Resources, namely, the *Explosives Act* of Canada and the *Atomic Energy Control* regulations.

We would like to make clear, however, that whereas the administrative responsibilities under these Acts and regulations should be transferred to the Territorial Government, amendment of the regulations would remain under Federal control for the time being, alterable only by Ministerial decision on the advice of the Territorial Assembly. In those matters that require policy decision at the Ministerial level, such as fiscal measures, the transfer of administrative functions will provide a source of balanced, senior level advice from within the Territory directly to the Minister.

Such changes would provide a number of tangible benefits for the orderly development of the North. Transfer of administration of regulations to the Territorial Government would provide executive level direction and a capability for the resolution of problems within the NWT. It would contribute to the development of a truly resident industrial base by encouraging industry in the Territory to look to the North for decisions affecting their day-to-day operations. It would enhance the principle that problems capable of resolution within the region should be solved here.

E. OIL AND GAS

Arguments similar to those used in relation to mining apply, in our opinion, to oil and gas. We see no reason why the enforcement of the *Oil and Gas Production and Conservation Act* and of the drilling and production regulations should be done from a Federal office in Yellowknife rather than from a Territorial office.

In many instances both Federal and Territorial officials are involved in safety and clean-up inspections and we would argue that it is logical for the industry to deal through one group of northern-based officials. It is also important that we are aware of oil and gas interests in relation to our socio-economic planning responsibilities.

We dealt in Chapter I with Federal objections to Territorial administration in this area due to national energy requirements. We should perhaps emphasize that all we are seeking at this time is a transfer of certain administrative responsibilities, and **not** a transfer of the Federal fiscal, distribution and policy interests.

F. FISHERIES

This subject is clearly an area where, under the *British North America Act*, the Government of Canada has sole responsibility. That fact is accepted. However, in the

case of the Western Provinces, Canada and the Provinces have reached agreement on the transfer of responsibility for inland fisheries. We are also interested in negotiating such an agreement. We believe that we have the same basis for negotiations as the Provinces in that we have professionally trained wildlife officers stationed throughout the NWT. These officers in fact take the oath of office under the *Fisheries Act*. Once having done so they are responsible for ensuring that the Act and its regulations are adhered to by the people they are to serve.

On the matter of offshore fisheries and marine mammals we recognize that their management has national and international implications. We would hope however, that a more responsive relationship would develop between the central bureaucracy of Fisheries Canada and the marine resources harvesters in the NWT. The recent emphasis on impact assessment related to offshore exploration has overshadowed the need for base-line inventories which are desperately required for a long-term management strategy of marine renewable resources.

At the present time, quotas on marine mammals are set with little or no scientific basis. We are not arguing against the need for quotas; we are asking for the department to pay some attention to their ongoing management and research responsibility in support of resource harvesting. The history of bowhead whale mismanagement will be repeated with narwhal and walrus if some major efforts are not soon undertaken to better understand how northern offshore fish and marine mammal stocks are supported. This is essential regardless of offshore hydrocarbon exploration. We would offer to the Department of Fisheries and Oceans our facilities and the assistance of our field personnel to proceed with this most important task.

G. PARKS

Section 4 of the *National Parks Act* states that "the National Parks of Canada are hereby dedicated to the people of Canada for their benefit, education, and enjoyment, subject to this Act and the regulations, and the National Parks shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations."

This Assembly is not opposed to National Parks. We have supported the National Parks Policy in the past, but we have understood that parks should, as the Act says, be for the use and benefit of the people.

Recently Parks Canada has proposed the establishment of additional National Parks or "wilderness areas" in the NWT based upon a policy which puts preservation first and the use and enjoyment of people second. We reject this new policy as being inconsistent with the intentions of the *National Parks Act*.

We maintain that the Government of Canada has created difficulties by not seeking the consent of the Assembly, as it does in the Provinces, prior to the creation of parks.

We have recommended therefore, that future parks should be established as Territorial Parks under the *Territorial Parks Ordinance*. In this way we can ensure that the rights and interests of people living in the area of any proposed park can be considered, and the park benefit people and promote tourism.

We do not want to see huge blocks of land withdrawn and managed for a single resource to the exclusion of all others. Parks established under the *Territorial Parks Ordinance* would provide us with the multi-use options that the NWT needs now.

H. ENVIRONMENT

The subject of environmental quality and management was not an issue addressed by the Fathers of Confederation in any specific way. It was not until 1970 that the Government of Canada took action in this area by the establishment of the Department of the Environment. Since its establishment this department has not secured a clearcut mandate in law on relevant subjects in the NWT nor has there been any opportunity for public debate in the authority of the department to issue countless regulations.

It is our understanding that the authority of the department is largely derived from the selective interpretation of clauses in the *Fisheries Act* and in eighteen other pieces of Federal legislation. As most of the regulations are to the "satisfaction" of the inspector, the public never knows what in fact the law is.

We maintain that all our requirements for environmental protection are contained in Sections 6 and 10 of our *Environmental Protection Ordinance*. We would therefore request that the Parliament of Canada withdraw its legislation, except with respect to offshore activities, so that the regulatory functions can be clarified and administered by Territorial and Local Government employees implementing Territorial legislation.

I. POWER

It is unacceptable that, whereas we have a vital interest in the welfare of the Northern Canada Power Commission, the Act which establishes this utility prevents any meaningful input by Territorial consumers or legislators.

We recommend that the Northern Canada Power Commission be located in the NWT; and power generation, transmission and distribution in the NWT should be subject to the legislative control of the Territorial Assembly.

Appendix III provides a chart of the areas of responsibility which the Assembly wishes to have transferred to Territorial control.

CHAPTER VI: THE REALLOCATION OF RESPONSIBILITIES IN OTHER PROGRAM AREAS

A. LAND TITLES

In this area we have simply recommended that the *Land Titles Act*, Canada, be repealed and a Territorial Land Titles Ordinance be enacted to replace it, so that Territorial Government employees are administering our own ordinance.

B. ATTORNEY GENERAL

The report, in 1966, of the Advisory Commission on the Development of Government in the Northwest Territories (Carrothers Commission) recommended that a Department of Justice be established within the GNWT.

Since that time, certain responsibilities have been transferred from the Department of Justice of the Government of Canada. Significantly, on January 1, 1971, the *Magistrate's Court Ordinance* and the *Justices of the Peace Ordinance* were brought into effect. At the same time, a Department of Legal Affairs was established and charged with the responsibility for the administration of justice including administration of the courts, legal aid and liaison with the police and Crown Attorney. This function is now carried on by the Department of Public Services. Except for the office of the Crown Attorney, all staff of the Department of Justice became employees of the GNWT and all magistrates, justices of the peace and coroners have been appointed by the Commissioner since that date.

In fact, and in law, the GNWT has the same responsibilities as any Province in the administration of justice, except for the function of Crown Attorney. We recommend that a Department of Justice should be established in the NWT immediately.

The function of Crown Attorney should be transferred to the NWT in two stages.

First, all staff in the office of the Crown Attorney should become employees of the GNWT. The actual Crown Attorneys would hold appointments as agents of the Attorney General of Canada, who now is also the Attorney General of the NWT, until such time as the *Criminal Code* is amended to provide that the Attorney General of the NWT shall be an elected Member of the Executive of the GNWT.

C. LABOUR

All of the Provinces have enacted legislation in the fields of labour standards and labour relations. Labour standards relate to minimum employment standards; labour relations encompass certification of unions, the orderly settlements of disputes and other similar matters.

The *Canada Labour Code* enacted by the Parliament of Canada deals with labour standards in Part III and labour relations in Part IV. Part III contains a waiver permitting the establishment of Labour Standards Ordinances in the two Territories, but Part V contains no such waiver. Consequently, since Federal legislation already occupies the field, we are prevented from enacting labour relations legislation.

We see no reason, apart from the reluctance of Federal civil servants to relinquish part of their authority, why the Territories should not be permitted to take over the field of labour relations. To this end we recommend that there be a minor amendment in Part V of the *Canada Labour Code*.

D. HUMAN RIGHTS

The *Canadian Human Rights Act*, which incorporated Parts I and II of the original *Canada Labour Code*, came into force in stages during 1977 and 1978.

We note that this Act also casts doubt on our ability to legislate in the field of human rights. Section 48(3) seems to indicate that the Territories are considered in the same light as the Provinces, but Section 29(l)(c) gives the Canadian Human Rights Commission the authority to set bylaws respecting the procedure to be used in dealing with complaints which arise in the Territories under Part III of the Act.

As a result, we have received a legal opinion that the Commission could exclude the Territories from the field of human rights merely by establishing such bylaws. Also, the majority of the Act apparently applies to the GNWT itself. This is a situation which does not exist in the Provinces. All Provincial Governments are subject to a greater or lesser extent to their own Provincial human rights legislation.

It is our position that only legislation enacted by the Assembly of the NWT should apply to the GNWT and to industries and operations falling under Territorial jurisdiction. We recommend therefore the appropriate amendments to the *Canadian Human Rights Act*.

E. HEALTH

The *British North America Act* identified health services as a Provincial matter. Until the 1950's, health services were provided to residents of the NWT by churches, RCMP, industry, lay persons and others, as need dictated.

Pursuant to a Memorandum to Cabinet dated October 19, 1954, the Northern Health Service was established by an Agreement with the Department of Health and Welfare. The Memorandum specifically stated that: "The constitutional responsibility for health which rests with the Territorial Government(s) would not be altered in any way."

It also referred to the interim nature of the Agreement as follows: "The special conditions in the North would appear to warrant this step until such time as the North has reached a stage of development when these services could be carried out effectively by the Territorial Governments concerned."

In 1960, Health and Welfare Canada entered into an Agreement with the GNWT, as it did with all Provinces, to establish the Territorial Hospital Insurance Services to be administered by the GNWT for native and non-natives.

In 1971, Health and Welfare Canada entered into an Agreement with the GNWT, as it did with all the Provinces, to establish the Medical Care Insurance Program to be administered by the GNWT, again for both natives and non-natives.

Legislation is currently in place for the provision of health services in the NWT, the *Public Health Ordinance*, the *Territorial Hospital Insurance Services Ordinance*, and the *Medical Care Ordinance* but, under the present arangements, the GNWT does not have full responsibility for the provision of those services. In other words, the Territorial Government currently pays for practically all health services in the NWT, but in many instances has no authority regarding the expenditure of contributed funds.

Health and Welfare Canada has agreed to the transfer of responsibilities to the GNWT but, without being at all specific, the Department of Indian Affairs and Northern Development has insisted on consultation with native groups. As we are the elected representatives of all people in the NWT we see this further act of paternalism by DIAND as totally unacceptable. Clearly, our constitutional authority can not be questioned and the Assembly recommends that the transfer of all health services for all NWT residents to the GNWT must occur no later the April 1, 1980.

F. HIGHWAYS

The *Northwest Territories Act*, Section 13, states that the Commissioner in Council may make ordinances in relation to "the closing up, varying, opening, establishing, building, management or control of any roads, streets, lanes or trails on public lands." This makes it quite clear that the planning, new construction, maintenance and reconstruction of any roadway in the NWT is clearly an item that should be dealt with only by the GNWT.

The roads policy and program for the NWT should reflect the *Northwest Territories Act* to a greater degree. All trunk roads, for example, could be the subject of Joint Federal-Territorial planning leaving local and service roads to be developed by the GNWT in conjuction with the Local level of Government. In this way the GNWT could be more responsive to changing demands for tourism and other needs.

We recommend that a long-range plan for highway construction and reconstruction under GNWT's control and management should be prepared for the approval of the Assembly as part of a system of multiyear funding to be negotiated with the Federal Treasury Board.

Appendix III provides a chart of the areas of responsibility which the Assembly wishes to have transferred to Territorial control.

CHAPTER VII: REGIONALISM, LOCAL GOVERNMENT DEVOLUTION

Introduction

Within the specific context of the NWT, regionalism is defined as a grouping of interests and concerns among and between peoples and the communities in which they live. This grouping may be the result of natural, usually long-term cultural, linguistic, social and/or economic factors. In the NWT grouping is also affected by imposed short-term factors such as administrative service areas. Land claims sit astride these two sets of factors. They are intended to be based on the natural long-term factors, but the method of dealing with them is resulting in the imposition of a different form of regionalism.

The Assembly, based on its definition of regionalism, believes that the issues of regionalism, Local Government and devolution are interrelated. We are also seeking a balance between the short-term and long-term forces towards regionalism.

Overall we feel that in the NWT, with its scattered communities and faintly emergent natural concepts of regionalism, we must ensure that nothing is done to interfere with the true basis of our diversity — strong Local Government. In this regard we have noted that experiences with organized regionalism elsewhere in Canada and the world have led to a weakening of Local Government.

We are also firmly of the opinion that the strength of Local Governments is dependent upon the devolution from the Federal to the Territorial to the Local levels of government of those powers which are important at each level.

The strengthening of Local Government is thus one of the basic elements in our approach to regionalism. The other two major elements that we see as practical in dealing with the diversity of regional interests in the NWT are the Members of the Assembly themselves, who are in fact elected to represent their "regions", and the regional administration of the GNWT.

The first part of this chapter will be a statement of principles which underlie our concerns with regionalism, Local Government and devolution. The second part will suggest what can be done to implement these principles.

PART ONE: STATEMENT OF PRINCIPLES

1. Unity is essential if the NWT is to attain an equal standing in the Canadian Confederation and the only way to achieve unity is through one representative Territorial Government. Once we have achieved an equal standing in Confederation, the question of division of the NWT might possibly be referred to a referendum.

2. Provision must be made for the diversity of interests which exists in the NWT and the basis for this diversity must be a strengthened system of Local Government.

3. Provision must also be made for addressing the various regional needs and concerns.

This can be done in three ways:

a) By using the increased number of Members of the Assembly to represent the full range of community interests in legislation and policy direction and to give the Members a larger role in dealing with their constituent communities.

b) By improving the administrative interface between the Local and Territorial levels of government.

c) By providing funds for meetings of representatives of the Local level of government.

4. The concept of regional governments as a distinct level of government with their own law-making powers and administrations must be rejected, for the following reasons:

   a) An additional level of government would provide greater opportunities for intergovernmental conflict through confusion over areas of jurisdiction. The result would be added difficulties for the ordinary citizen who wants to get things done.

   b) Our research of other experiences in Canada and elsewhere has indicated that regional government weakens Local Governments.

   c) Regional government would have an adverse effect on territorial unity.

   d) Regional government would weaken the role of the Members of the Territorial Assembly.

5. The role of the Federal Government in the NWT must be reduced in order to make way for a better co-ordinated Territorial Government and stronger Local Governments.

6. The ultimate responsibility for developing legislation and program policy will remain at the Territorial level of government; however:

   a) Territorial legislation will be written in such a way as to encourage as much as possible local choices and local adaptations through the making of local rules and regulations at the Local level of government.

   b) Territorial policy will be developed taking into full consideration local and regional input.

7. The responsibility of the GNWT administrative regions is to administer programs and policies approved by the Territorial Assembly.

8. The Assembly insists that the transfer of responsibilities from the Federal level can only be to the Territorial level of government. Specifically the Assembly will not accept the transfer by the Federal Government of the responsibility for programs available to all people, to any body which represents solely ethnic interests.

9. The Assembly recognizes, however, that there may be supplementary programs available under land claims which will be delivered by bodies set up under land claims with the concurrence of the Assembly.

10. The Assembly would encourage an advisory relationship between any supplementary program and the ongoing programs of the GNWT.

11. The Assembly believes in the principle of a close working relationship between the native organizations and the Territorial Assembly.

12. The Assembly believes in the principle of a close working relationship between all interested groups in the NWT and the Territorial Assembly.

13. The Assembly does not favour the establishment of separate bodies dealing with socio-economic matters without the approval of the Territorial Assembly and, where appropriate, the Local level of government.

14. Regional bodies must not be established which invade the powers of the Local level of government **or** retain any powers which that level of government may seek in the future.

15. The Assembly believes that any concept of devolution must be based on an acceptance of the fact that the Territorial and Local levels of government are two separate and distinct levels of government within the NWT. It would not be proper therefore, for the Territorial level of government to plan devolution for communities. Devolution must be planned by communities. The Local level of government must negotiate the powers it wishes to have in the same way that the Territorial level of government negotiates the powers it wishes to have devolved from the Federal level.

16. The Assembly believes that the GNWT must devote more energy to informing communities about government programs. Part of this information will be the statutory requirements in relation to certain programs. The Government Administration must make every effort, however, to negotiate openly on the nature and extent of powers required at the Local level. The Assembly will expect to receive a report annually on the extent of community contact and response.

17. There must be a recognition at the Federal level of government that devolution to the Local level must be negotiated only between the Territorial and Local levels of government. This will require the transfer of more powers to the Territorial level, particularly in the areas of resource use and socio-economic development, because of the prime interest in these areas at the Local level of government.

PART TWO: IMPLEMENTING THE PRINCIPLES

In order to implement the principles listed above, the Assembly makes the following action recommendations.

NOTE: Where it is indicated that the Assembly has already made provision for action, the Government Administration will be expected to report regularly to the Assembly on the progress of implementation.

A. In Order to Strengthen the Role of Members of the Assembly

1. Elected Members will constitute the Executive Committee.

2. Elected Members must direct and control the negotiations for funds and the allocation of funds for the GNWT.

3. Adequate travel funds and allowances must be available for M.L.A.'s to visit their constitutency communities on a regular basis.

4. M.L.A.'s should be able to move around the Territories as a group and receive presentations from native organizations, Local Councils and other interest groups.

5. M.L.A.'s should be able to attend all regional meetings that involve their constituents and raise issues of policy in the Assembly and with the Executive Committee.

6. M.L.A.'s should be kept informed of GNWT actions and have the opportunity to make important announcements in relation to their constituencies.

B. In Order to Meet the Regional Needs and Concerns of Representatives of the Local Level of Government

1. Funds would be provided for meetings of community representatives who could:

   a) Have an agenda determined by the attending communities.
   NOTE: Having examined this question in some detail we have come to the conclusion that there is no magic list of issues and concerns which are more regional than local, and even where it may appear to be more appropriate to address issues in some regional context (e.g. secondary education and certain aspects of transportation) it is important that the needs and the priorities emerge from the Local level of government.

   b) Include the region's Members of the Territorial Assembly so that community representatives would have opportunities for influencing legislative and policy decisions at the Territorial level of government.

   c) Include a representative of any native organization at the discretion of the community representatives.

   d) Make their administrative recommendations to the appropriate regional superintendents in the regional office.

2. The Administration of the GNWT will be asked to bring forward plans for:

   a) Improving the contact with Local Governments by all departments.

   b) Involving Local Government representatives in regional planning and decision-making.

c) Financing regional meetings with particular attention to the question of whether or not this should be done by adding to local budgets.

d) Co-ordinating the delivery of Territorial and Federal programs.

e) Rationalizing the boundaries of GNWT regions to take into account NWT constituency boundaries, socio-economic areas, cultural groups, land claims areas and Federal regions.

f) Holding seminars with Territorial civil servants to encourage a more open attitude towards program information and delivery at the Local level.

3. The Territorial Assembly will seek a closer working relationship with native organizations.

4. Territorial policies will be based on regional input by various means, including those detailed in Section A above.

C. In Order to Strengthen the Local Level of Government

1. Territorial legislation will provide, as far as possible opportunities by authorizing the Local level of government to make local rules and regulations.

2. Territorial policies will reflect local input for the benefit of the Territories as a whole.

3. The Local Council will be established as the prime body through which a community can exercise responsibility for, or interest in, community programs and services. It will also be **the** body with which devolution will be negotiated.

4. Support will be given to the rationalization of the committee structure in communities. Specifically the GNWT will be instructed and the Federal Government will be requested to stop establishing committees not approved by the Local Council.

5. A recommendation has been made by the Assembly for the formation of one Local Government Council in communities where there is both a band council and a settlement or hamlet council.

6. A recommendation has been made by the Assembly that an Incorporated Communities Ordinance be prepared. Part of the purpose of this ordinance would be that those settlements that have assumed responsibilities can be recognized as legal entities.

7. A recommendation has been made by the Assembly that greater flexibility should be introduced in Local Government procedures so that local people can find the process of government easier and more compatible with local customs.

8. There will be an increasing insistence on some relationship between the powers of Local Governments and their willingness and ability to collect local taxes, such as the property users tax.

D. In Order to Encourage Devolution

1. A recommendation has been made by the Assembly for the preparation of an Incorporated Communities Ordinance which will allow settlements and hamlets to undertake a gradual assumption of responsibilities in relation to community priorities.

2. The Administration of the GNWT will be asked:

   a) To prepare plans for increasing the information flow on GNWT programs and services to communities;

   b) To encourage communities to recognize that devolution must come at their request;

   c) To report annually to the Assembly on the nature, extent and effect of its contacts and negotiations with the Local level of government.

3. The Territorial Assembly will insist that there be:

   a) No devolution of powers to NWT communities except through the Assembly;

   b) A speed-up in the devolution of powers from the Federal to the Territorial level, particularily in the areas of resource use and socio-economic development;

   c) A recognition of the fact that there is a relationship between devolution and the willingness and ability to pay. In this regard the Administration of the GNWT will be asked to explore additional possibilities for raising revenue in the NWT, including any additional powers required at the Local and Territorial levels of government. Also, in responding to requests for devolution to the Local level of government, the Assembly will expect to see some evidence to a local contribution to costs.

APPENDIX I

AN ORDINANCE TO AMEND THE COUNCIL ORDINANCE

The Commissioner of the Northwest Territories, by and with the advice and consent of the Council of the said Territories, enacts as follows:

1. The **Council Ordinance** is amended by adding thereto, immediately after Section 3 thereof, the following heading and sections:

"EXECUTIVE COMMITTEE

4. There shall be a committee, styled the Executive Committee, to aid and advise in the government of the Territories.

5.(1) The Commissioner may from time to time name Members of the Council who are to be Executive Members.

(2) Every Executive Member shall before he assumes any duties of his office take an oath of office as prescribed by regulation."

APPENDIX II: SECTION 92 OF THE BRITISH NORTH AMERICA ACT

Exclusive Powers of Provincial Legislatures.

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next herein-after enumerated; that is to say,—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:—
    (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any others of the Provinces, or extending beyond the Limits of the Province;
    (b) Lines of Steam Ships between the Province and any British or Foreign Country;
    (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two of more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely local or private Nature in the Province.

Subjects of exclusive Provincial Legislation.

APPENDIX III: AREAS OF RESPONSIBILITY FOR TRANSFER TO TERRITORIAL CONTROL

Responsibility	Appropriate Legislation in Place		Staffing and Funding in Place	
	Federal	Territorial	Federal	Territorial
Lands	x	x	x	x
Water	x		x	
Forest	x	x	x	
Minerals	x	x	x	
Oil and Gas	x		x	
Fisheries (Inland)	x		x	x
Parks	x	x	x	x
Environment	x	x	x	x
Power	x			
Attorney General	x	x	x	x
Labour	x	x	x*	x
Human Rights	x	x	x*	x
Health		x	x	x
Highways		x	x*	x

Proposed Legislative Arrangements		Proposed Staff and Administrative Arrangements		Timetable for Change N - Now Y - Next 4 years P - Provincial Status	
Federal	Territorial	Federal	Territorial	Admin.	Control
	x		x	N	P
x			x	Y	Y
	x		x	N	Y
x	x	x	x	N	P
x	x	x	x	N	P
x			x	Y	P
	x		x	N	N
	x		x	N	N
	x			Y	Y
x	x		x	N	Y
	x		x	N	N
	x		x	N	N
	x		x	N	Y
	x		x	N	Y